IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1946 OF 1982

Punjab National Bank ....Plffs
vs.
Swadeshi Textile Traders ....Defnds

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Swadeshi Textile Traders ....Defnds

S. Joshi i/b. Pandit and Pandit for the plffs.
Bharat Vaishnawa for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 7TH JUNE, 2005.

P.C. :

1. The present suit is filed by the bank for the recovery of sum of Rs.2,72,132.75/- alongwith interest at the rate of 19.50% p.a. from the date of the filing of the suit till the date of payment. Some of the material facts of the present case are as under :

2. The first defendant firm was carrying on business as merchants and dealers in cloth and yarn and also as commission agents. The defendant is the sole proprietor of one Mr. Sanwarmal Agarwal. Sometime in or about April 1976 the defendant approached the plaintiff bank for the purpose of cash credit facilities against the pledge of goods and also requested for advance by way of discounting bills. On such request the plaintiff agreed to grant to the defendants the cash credit facility against the pledge of goods and also bills purchase facilities by way of purchase of bills. Thereafter the defendants executed various documents so as to secure the repayment of loan lent and advanced by the plaintiffs. The defendant has executed an agreement dated 22.4.1976 pledging the goods against the cash credit facility advanced by the bank to the defendant. Under the said account the cash credit facility an amount lent and advanced was of sum of Rs.1,00,000/- and it was decided that the defendant would maintain margin of 30%

and the minimum rate of interest will be 17 1/2%. The defendant also executed a promissory note dated 22.4.1976 and continuing security dated 22.4.1976 inrespect of the said cash credit facilities. Inso far as the bills purchase facility is concerned the plaintiff executed an agreement dated 20.4,1976 and also a letter of request dated 20.4.1976 for discounting the cheques or documentary bills. Thus the defendants thus availed of aforesaid facilities on the terms and conditions which are set out in the said agreement. Under the terms and conditions of the said agreement the said loan facility was required to be repaid in various instalments on its due dates.

3. It is the case of the plaintiff that the said bill purchase facility account was irregular and the defendant has not repaid the amount which was due and payable on due date of its instalments. Thereafter the correspondence was exchanged between the plaintiff and the defendant. In view of the fact that the defendant

did not regulate the account as per the terms and conditions of the loan agreement the plaintiffs issued a notice through their advocate dated 5.5.1992 calling upon the defendant to repay. However inspite of notice the defendant failed and neglected to repay and therefore the plaintiff has filed the present suit for the recovery of Rs.1,62,812.09/- as an amount outstanding under the cash credit facility and interest thereon of sum of Rs.1,09,320.66/- which was in arrears and had become due and payable. The defendants have filed the written statement dated 17.1.1995 and has inter-alia claimed that the defendant has pledged various goods. It is the case of the defendant that the plaintiffs have not given any account inrespect of the said pledged goods lying with the plaintiff bank. Insofar as the execution of documents is concerned the execution thereof is admitted in para-4 of the written statement but interpretation of the said documents is sought to be disputed. It is further the case of the defendants that the plaintiff did not abide by the terms and conditions of the facility given to the

defendant and did not even furnish the statement of accounts from time to time. It is the case of the defendants that the plaintiff bank has committed breach of the terms and conditions on which the loan was granted. In view thereof according to the defendants the statement of Accounts given by the plaintiff is not correct. The defendant has further contended that the plaintiff have not given the details of pledged the goods and therefore the claim made by the plaintiff for the recovery of the said amount is frivolous and should be dismissed. The advocate for the plaintiff has filed compilation of documents and has led oral evidence by way of an affidavit of evidence dated 13.4.2005. In para-4 of the evidence the plaintiff has deposed that under the terms and conditions of the agreement pledged goods were to remain with the defendant and not with the plaintiff. In para-8 of the said evidence it is mentioned that in accordance with the letter dated 22.4.1976 being Exhibit-C to the compilation of exhibits tendered in the court. The defendant has executed a letter inter-alia

stating therein that the goods will be held by him and he will give declaration inrespect of the goods held by him from time to time in the manner prescribed by the state and Central Government inrespect of the hypothecation of pledged goods which are lying with the defendants. It is the case of the plaintiff that no goods were available at the time when the the application was moved for interim order. The goods were in the possession of the defendants and were never handed over to the plaintiff and therefore the question of the plaintiff bank giving the details of the goods pledged with them as claim in the written statement does not arise. I have perused the documents on record. I find from the record that the plaintiff witness is not cross examined by the defendant. Learned counsel appearing for the defendants states that he has no instructions in the matter. In view thereof the evidence is taken to be correct and the same is required to be accepted. I find that the exhibits produced before me and the books of accounts maintained by the plaintiffs which have been duly certified

under the Banker’s Books of Evidence Act, 1970 are required to be accepted. In view thereof there is no merits in the defence raised by the defendant. I accordingly pass the following decree.

4. Suit is decreed in terms of prayer clause (a), (b) and (c). There shall be no order as to costs.

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